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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,941	07/17/2003	Peter Gingras	14188-002001	1557
26161 7590 07/12/2010 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
SWEET, THOMAS				
ART UNIT		PAPER NUMBER		
3774				
NOTIFICATION DATE		DELIVERY MODE		
07/12/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

### Office Action Summary

**Application No.**

10/621,941

**Applicant(s)**

GINGRAS, PETER

**Examiner**

Thomas J. Sweet

**Art Unit**

3774

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 15-23, 25 and 85 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12, 15-23, 25 and 85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 8-12, 15-23, 25 and 85 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-10, 12, 15-23, 25 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pacetti et al (US 6574497) in view of Pacetti et al (US 6355058). Pacetti et al discloses a non-woven soft tissue implant (stent, fig 13) comprising a porous biocompatible film (168 and 169, fig. 15) having a plurality of cells (as shown in fig. 13), and a surface area ratio less than 1.5 (inherent, as clearly seen in fig. 13, plus its expandable to much smaller ratio), wherein the biocompatible film (168 and 169) comprises two or more films (film-a thin layer or coating, description of fig. 15) of polymer or copolymer and having biaxially oriented chains (coextruded). However, Pacetti et al (497) remains silent as to thickness of less than about 0.015 inches. Pacetti et al (058) teaches another stent for the same purpose with specifies a thickness of less than about 0.015 inches (col 4, lines 24-27, 1-10 microns) for the purpose not altering the geometry of the stent. It would have been obvious to one of ordinary skill in the art at the

time the invention was made to use the thickness of as taught by Pacetti et al (058) for the layers of Pacetti et al (497) in order not altering the geometry of the stent.

Regarding claims 9 and 10, The non-woven soft tissue implant of claim 1, wherein one or more of the cells in the plurality of cells has a diameter, measured along the longest axis of the cell, of about 10 microns to about 10,000 microns. ("There is no inherent limitation on the stent's diameter or length, and as such will be dependent upon a particular application for the stent.", col 7, lines 39-41 of Pacetti et al (058), given a typical stent diameter of ½ and inch or less meets this claim based on the drawings. Note-precise proportions are not being used in this rejection).

Regarding claim 12, fully expanded the cells are rectangular so the cells are essentially rectangular at any expansion.

Regarding claim 15, 25 micron equates to about 0.001 inches.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pacetti et al (US 6574497) in view of Pacetti et al (US 6355058) as applied to claim 9 above and in further view of Wulfman et al (US 20030139802) . Pacetti et al (497) as modified disclosed a non-woven soft tissue implant as discussed above. However, Pacetti et al (497) does not disclose one or more of the cells in the plurality of cells has a diameter, measured along the longest axis of the cell, of about 50 microns to about 100 microns. Wulfman et al teaches another a non-woven soft tissue implant including cells less than about 100 microns (14, claim 8, encompassing 50 microns to 100 microns) for the purpose of reinforcing the structure as a critical point. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a cell size of less

than 100 microns (including 50-100) as taught by Wulfman et al on the stent material of Pacetti et al in order to reinforcing the structure as a critical point.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Sweet whose telephone number is 571-272-4761. The examiner can normally be reached on 6:45am - 5:15pm, Tu-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3774

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas J Sweet/

Primary Examiner, Art Unit 3774